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United States Court of Appeals, Ninth Circuit, 14 August 1989 882 F.2d 452

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ALL ALASKAN SEAFOODS, INC. v. M/V SEA PRODUCER
United States Court of Appeals, Ninth Circuit, 14 August 1989
882 F.2d 425

Claims for cargo damage against a ship as a common carrier can give rise to tort liability irrespective of contract obligations between the parties thereby entitling the claim to priority over a preferred ship's mortgage as a maritime lien. The Carriage of Goods by Sea Act does not apply by its own force to the contract between two parties when the contract is for carriage between two domestic ports.

FACTS: In October, 1986, All Alaskan Seafoods, Inc. ("All Alaskan") commenced an action against the M/V Sea Producer ("Sea Producer") and its operator, Express Marine Transportation Co., ("Express Marine") for cargo damage. All Alaskan alleged in its complaint, that it suffered losses totalling an estimated $1.5 million when its shipment of frozen king crab thawed while en route from Molar, Alaska to Seattle, Washington. In addition, the shipment of king crab was contaminated by a refrigerant leakage in the hold of the Sea Producer. All Alaskan further alleged that the losses it suffered were caused by the negligence of Express Marine.

In April, 1987, People's National Bank of Washington ("People's") seeking to foreclose a preferred ship's mortgage on the Sea Producer intervened in the action. All Alaskan and People's filed cross motions, before discovery had commenced for partial summary judgment to establish priority of their respective liens against the vessel. All Alaskan's motion was denied; however, the district court granted partial summary judgment for People's Bank. The court held that All Alaskan's maritime lien on the Sea Producer was subordinate to People's ship's mortgage. The court concluded that under the Ship Mortgage Act, All Alaskan's claim for cargo damage sounded only in contract and not in tort, and therefore All Alaskan's claim was not entitled to priority as a maritime lien under 46 U.S.C. §953 (a)(2). All Alaskan appeals this judgment.

Although All Alaskan concedes that the order at issue is interlocutory in that its claims and those of People's mortgage remain unadjudicated on the merits. It contends that appellate jurisdiction exists pursuant to 28 U.S.C. §1292 (a)(3). Appellees People's argue that the court erred in exercising jurisdiction relying on the Ninth Circuit's decision in Seattle First National Bank v. Bluewater Partnership, 772 F.2d 565 (9th Cir. 1985).

All Alaskan also asks the court to rule, based on the evidence presented to the district court, that the Sea Producer was a common carrier and that the duty of due diligence codified in the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. §§1300-1315, applies by its own force to the contract between Express Marine and All Alaskan.

ISSUES: (1) Was the granting of the partial summary judgment to People's appealable under 28 U.S.C. §1292 (a)(3)?

(2) Did the district court err in ruling, as a matter of law, that All Alaskan's claim for cargo damage could only sound in contract and as a result would not be entitled to priority under the Ship Mortgage Act, 46 U.S.C. §953 (a)(2)?

(3) Was the Sea Producer a common carrier within the meaning of COGSA, 46 U.S.C. §§1300-1315?

ANALYSIS: The Ninth Circuit, in concluding that the district court's partial summary judgment on the issue of lien priority was appealable, rejected appellees' reliance on its own force to the contract between two parties because the contract was for carriage between two domestic ports. The federal statute governing bills of lading between two domestic ports is the Harter Act, 46 U.S.C. §§190-196. This statute would apply in the absence of an express agreement between the parties. The court concluded that even if Express Marine was not a common carrier for the purpose of this shipment, and that no federal statute applied, the parties could have incorporated a statutory standard by expressly adopting it in their contract. The Ninth Circuit held that these issues would be decided by the district court on remand.

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